

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1487 OF 2006

Union of India & Ors. ... Petitioners

V/s.

P.R. Lele Sons & Ors. ... Respondents

Mr. A.S. Rao i/b. Pankaj Kapur for petitioner.
Mr. A.P. Vanarshe i/b A.V. Latne for respondent No.1.

CORAM : F.I. REBELLO &
ANOO V. MOHTA, JJ.
DATED : 6th October, 2006

P.C.

. Rule. Heard forthwith.

2. The petitioner challenged the order of CAT in O.A. No. 758 of 2003 decided on 6th February, 2006. The learned Tribunal after considering various judgments and judgment of a learned Division Bench of this Court reported in **Union of India V/s. T. Mukundan, 2005 (3) Mh.L.J. 412** allowed the original application. The matter pertains to interpretation of Rule 48-B which came into force from 10.09.1983. The respondent had retired from 05.05.1982. Considering Rule 48-B CCS (Pension) Rule, 1972 the learned Tribunal, held that the benefit of addition of five years service can be given also in respect of those retirees who had retired before 10.09.1993. This order is the subject matter of the present petition.

On behalf of petitioner, the learned counsel points out that the learned Bench wrongly construed the ratio of judgment of the Supreme Court in **V. Kasturi V/s. Managing Director, State Bank of India, Bombay, AIR 1999 Supreme Court 81** and further the attention of the learned Bench was not invited to the judgment of the Supreme Court in **Union of India and ors. v/s. Dr Vijayapurapu Subbayamma (2000) 7 Supreme Court Cases 662**. The Supreme Court in that judgment held that if a retiree did not meet the qualifying requirement prior to the date when the pension was due and payable and if there is any subsequent notification, such person would not be entitled to the pensionary benefit.

3. Our attention was also invited to the subsequent judgment of Supreme Court in **State of Punjab & Ors. V/s. Amarnath Goyal & Ors. (2005) 6 SCC 754** to point out that fixation of cut off date bearing various facts in the mind including financial constraint was within the power of the authority concerned and persons who are retired before that date cannot claim benefit of post facto law. The learned counsel also points out to us that issue involved here is before the Hon'ble Supreme Court.

4. We find that the contentions urged by the petitioner, prima facie had some merit, however, considering the judgment of Division Bench of this Court and the fact that the though matter would require reconsideration and if allowed, the matter will be required to be referred to larger Bench, that would not be in the interest of the pensioners. In our opinion, considering that the respondent is retiree and also a similar matter is pending before the Apex Court, it would be appropriate that the matter is agitated before the Apex Court.

5. Considering the judgment of the Division Bench Rule is discharged. The order of CAT not to be given effect to for a period of eight weeks to enable the Union of India to move the Supreme Court and to seek whatever relief they are entitled to.

6. With the above observations, the petition disposed of.

[F.I. REBELLO, J.]

[ANOO P V. MOHTA, J.]